

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 722 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MB VAMDOT

Versus

BHARAT PETROLEUM CORPROATION LTD.

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR GN SHAH for Respondent No. 1
SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.M.SONI

Date of decision:14-7-1997

(C.A.V. JUDGMENT)

This matter came for final hearing of notice as to interim relief. However, with the consent of the parties Advocates, the same is finally heard.

This Revision Application is directed against the judgment and order passed on 30th April,1997 by the learned Extra Assistant Judge, Surat in Misc.Civil Appeal

no.200 of 1996(disposed of alongwith Misc.Civil Appeal no.199/96 and 201/96 by a common judgment) whereby the learned Extra Assistant Judge has set aside the order passed by the 4th Joint Civil Judge(S.D.), Surat below Exh.27 in Civil Suit no.482/96. Appellant no.1 is original plaintiff and Respondents are respective defendants. They will be referred to as such plaintiffs and defendants hereinafter.

Few facts to appreciate the contentions raised in this Revision Application are as under:

One Mr. Vamdot took on lease by a Registered deed the land referred hereafter from the defendant no.3 with a right to sublease. Said Vamdot granted lease to the defendant no.1 by Registered deed. The defendant no.1 then granted licence to Mr. Vamdot to run the petrol pump and to deal in other petroleum products on the suit land. Before grant of licence to Mr. Vamdot, the defendant no.1 spent substantial amount towards construction of office building, storeroom, drive away and installing tanks and petrol and diesel pumps. Necessary licence and permissions to run petrol pump and deal in petroleum products were and are in favour of the defendant no.1. This is all done within the knowledge of the original landlord-the defendant no.3. Since the date of sublease, the defendant no.1 was put in possession by lessee Mr. Vamdot who was put in possession by defendant no.3 and the defendant no.1 is in possession till date. The defendant no.1 used to pay rent to said Mr. Vamdot or his legal representatives. Thereafter, it appears that said Vamdot entered into a partnership and on his demise his legal heirs one Kantaben and the defendant no.2 also entered into a partnership with one Shobanaben Jariwala who again retired from the said partnership and Shri Ankur Jariwala entered into partnership with the defendant no.2 and Kantaben from the year 1993. It is the case of the plaintiff that the defendant no.3-landlord leased out the suit land to him by a lease deed on 1st July 1988 and gave the possession thereof. He entered into a partnership with said defendant no.2 and one Kantaben with effect from 30th March, 1993 alleging that since then they are in possession and as the defendants nos.1 and 2 are trying to disturb their possession, the present suit for declaration and injunction is filed. Learned trial Judge granted injunction prayed vide Exh.5 and rejected relief for counter injunction of the defendant no.1 prayed vide Exh.27. The learned trial Judge also granted status quo. The defendant no.1 preferred Misc.Appeal before the learned District Judge and the said Misc.Appeal came for

hearing before the learned Extra Assistant Judge who in his turn allowed the appeals filed by the defendant no.1 by a common judgment.

Against the judgment and order in Misc.Civil Appeal no.199/96 original plaintiff had filed Civil Revision Application no.697/97. The learned Extra Assistant Judge had by his judgment and order dismissed application Exh.5 where interim injunction to protect his possession was granted by the learned 4th Joint Civil Judge(S.D..) in the suit. Said Civil Revision Application no.697/97 when came up for admission hearing, the Court (Coram: Miss R.M.Doshit, J.) dismissed the application on 22nd May, 1997. This Revision Application was filed by the plaintiff on 22nd May, 1997 and the Court (Coram: Miss R.M. Doshit,J.) issued rule and notice as to interim relief returnable on 16th June, 1997 and granted by way of ad interim order, status quo as to possession of the suit premises till 17th June, 1997, on 26th May, 1997. The matter was placed before this Court. It was finally heard on 20th June, 1997 with the consent of the parties. This Court was about to dictate the order on that day, but the learned Advocate for the applicant wanted to take instructions from his client as to whether he would like to have reasoned order. The matter was therefore adjourned to 23-6-1997 for passing order. However, it was made clear to the learned Advocates for the parties that this Court has not and is not continuing interim relief granted by the learned Single Judge at the time of admission after 17th June, 1997. Work assigned to this Court was changed from 23rd June, 1997 and is sitting in the Division Bench. The learned Advocate for the applicant then informed this Court at 4.45 p.m. on 23rd June, 1997 in the Chamber that the reasons be assigned and also requested that the interim relief as to status quo be continued for four weeks to facilitate the applicant in case this Court is not allowing the Revision Application. In view of this fact, the Court informed them that the orders will be passed within a day or two. This is how the matter stands.

The applicants herein as plaintiff filed a Civil Suit for declaration and permanent injunction to restrain defendants, their servants and agents from interfering with their possession as tenant of land admeasuring 1100 sq.meters in Block no.170/2 of Survey no.100/A/2 of village Saroli, Tal: Choriyasi, Dist: Surat. In that suit, the plaintiff gave an application Exh.5 for interim injunction pending the disposal of suit. The defendant no.1 had also preferred an application for counter

injunction vide Exh.27 asking the Court to restrain the plaintiff from entering into 16000 sq.feet of the land of S.No.100 of village Saroli known as M.B.Vamdot, BPC Petrol Pump at Kumbharia. The suit premises and premises referred to by the defendant no.1 in Exh.27 appears to be the same as both refers to petrol pump and it is not the case of the plaintiffs that land referred to by the defendant no.1 is quite a different land than the one over which he claims possession; though the area of land referred varies. The defendant no.1 has also filed an application Exh.26 to restrain the plaintiff from carrying out construction of any compound wall or construction either temporary or permanent in the suit land.

Learned Advocate Mr. M.J. Thakore appearing for the applicant has contended before this Court that the learned Extra Assistant Judge has committed error in as much as the fact of filing such application Exh.27 and praying for relief to prevent the plaintiff from entering into the suit land establishes the fact that the plaintiff is in possession of the suit premisses and once the plaintiff is proved to be in possession, his possession should be protected atleast till the disposal of the suit. The learned Judge of this Court while disposing of Civil Revision Application no.697/97 against the order below Exh.5 has disposed of the same on the ground that there is no jurisdictional error in the judgment. The factual aspect as to possession, therefore stands concluded. Mr. Thakore further contended that the plaintiff is a tenant in possession since 1988 and his possession is required to be protected by granting status quo.

Learned Advocate Mr. G.N.Shah for the respondent no.1 has contended that there is no jurisdictional error whereby this Court in exercise of revisional jurisdiction under Sec.115 of the Civil Procedure Code(" Code" for short) can interfere with the order passed by the learned Extra Assistant Judge This apart, the learned Advocate contended that (1) The suit is not maintainable in as much as the suit is filed by a partnership firm which is not registered under the said Act and the suit is barred by the provisions of Section 69 of the Partnership Act, (2) That the fact that defendant no.1 is in possession as held by the appellate Court stands concluded by the judgment of this Court in Civil Revision Application no.697/97. Mr. Shah further contended that filing of this Revision Application is only a strategy of the plaintiff to deprive the defendant no.1 of possession by any means. Mr. Shah further contended that once the

Court held that the defendant no.1 is in possession of the suit premises and the plaintiff cannot be granted interim injunction as prayed for, the trial Court ought to have granted the relief vide Exh.27 which the learned appellate Court granted, to protect its possession.

On reading the impugned order in appeal qua Exh.27, it is clear that there is no jurisdictional error committed by the learned Extra Assistant Judge, and therefore, exercise of revisional powers under Section 115 are not called for. It is the case of the defendant no.1 that they are in possession, however, the plaintiff by muscle power tries to prevent the defendant no.1 from entering into possession of the suit premises , and when plaintiff under the guise of interim ex parte order below Exh.5 took over possession, the present application Exh.27 came to be filed. It will be relevant to refer to the averment in the application Exh.27 which reads as under:

"The defendant no.1 is entitled to hold and enjoy the said petrol pump site, office room, storeroom, pumps and tanks and all other facilities erected therein, yet the plaintiff and his associates are not allowing the defendant no.1 to enter into the premises. They do not even pay any heed to the police officers and are taking shelter of interim order issued by this Honourable Court against this defendant."

He has therefore prayed for relief to restrain the plaintiff from entering into the suit site. Thus, either Exh.5 can be allowed or Exh.27 can be allowed. Rejection of Exh.5 would as a consequence allow Exh.27 Likewise, rejection of Exh.27, would allow Exh.5. In the instant case, the appellate Court has rejected Exh.5 and allowed Exh.27. This Court by order in Civil Revision Application no.697/97 has confirmed the order below Exh.5 passed by the learned Extra Assistant Judge and as a necessary consequence and/or corollary and to avoid any anomaly in the same order below Exh.27 is required to be confirmed and the learned Extra Assistant Judge while so doing has not committed any error, much less jurisdictional, which calls for interference by this Court.

This apart, the plaintiff is a partnership firm namely, M/s. M.B. Vamdot. The same is filed through his Managing Partner Shri Ankur Jariwala. The plaint is signed as a partner. Vakalatnama for the plaintiff is also signed by a partner. Necessary averments in the plaint are to the effect that the suit is by a

partnership firm. There are also averments in the plaint to the effect that the plaintiff is partnership a firm. Therefore, it is clearly the case of the plaintiff that it is a partnership firm and the suit is by a partnership firm. Once the suit is filed by a partnership firm which is not registered under the provisions of the Indian Partnership Act, the Court has no jurisdiction to entertain the same, as the same is barred by provisions of Sec.69 of the Partnership Act, relevant part whereof reads as under:

"69. (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm."

In view of the above provision, the suit by an unregistered partnership firm cannot be entertained and is liable to be dismissed. Thus, there is no *prima facie* case in favour of the plaintiff in as much as the suit is liable to be dismissed on this ground even on a preliminary issue.

So far as the question of possession is concerned, it will be relevant to state that the defendant no.3-the landlord is a Trust. As averred by the plaintiff in the plaint, the defendant no.3 has leased out the lands to them for the period from 1st July, 1988 to 1st July, 2039 i.e. for about 50 years as it reads from the copy of plaint shown to me by the plaintiff's Advocate Mr.Thakore. Under Sec.36(1)(b) of the Bombay Public Trust Act any lease for a period of three years of nonagricultural land or a building or ten years of agricultural land by the Trust can be granted only after the sanction of the Charity Commissioner. Any lease in contravention of Sec.36(1)(b) of the Bombay Public Trust Act is invalid. Here, in the instant case, there is nothing to show that any sanction is accorded by the Charity Commissioner for the alleged lease. Therefore, lease is invalid and the possession thereunder cannot be a legal one. This apart, there is nothing on record to show that the said Shri Vamdot who was granted

the lease by a registered deed in the year 1968 with a right to sublet either terminated said lease lawfully or the said Shri Vamdot has surrendered the same so as to entitle the defendant no.3 to grant fresh lease. So also the defendant no.1 has also not surrendered the lease. From this it can be said that even if one assumes that the plaintiff can be said to be in possession that itself does not refer to a valid title. Possession even if is with the plaintiff, it is not a legal possession. There is nothing to show how defendant no.1 has ceased to be in possession. Until defendant no.1 is dispossessed question of plaintiff being in possession does not arise. Thus, there is no *prima facie* case in favour of the plaintiff.

Apart from this, it appears that Shri Ankur Jariwala entered into partnership with the defendant no.2 and one Kantaben as the licence was in favour of the defendant no.2 and said Kantaben to run the petrol pump and deal in petroleum products as granted by the defendant no.1. Construction of petrol pump, tanks etc. is by defendant no.1 and it is not disputed by plaintiff or defendant no.2. Any of the averments in the plaint paragraph (1) are not supported by any documents, much less by relevant documents. Thus, when the learned Appellate Judge has held that the plaintiff is not in possession of the suit premises, I do not find any error much less jurisdictional error qua order with respect to deciding Exh.27 in that very judgment.

In view of these facts, Revision Application is liable to be dismissed and is hereby dismissed. Rule is discharged. No order as to costs.

Request to extend the order of status quo is refused as on the last day of hearing it was made clear to the learned Advocates that this Court is not continuing the order of status quo which was effective upto 18th June, 1997. This Court also do not find any reason to extend the same.

sf-sms